IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/10/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 11923 OF 2000
and
WPMP.NO.17093 OF 2000

Madras Refineries Limited,
Manali,
Chennai 600 068.
Rep. by its General Manager (P&A) .. Petitioner

-Vs-

1. V. Jayakumar

2. The Presiding Officer,
Industrial Tribunal,
Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr. Sanjay Mohan for
M/s. Ramasubramaniam &Associates

For Respondent-1: Mr. V. Balasubramanian

Respondent-2: Mrs.N.G. Kalaiselvi,
Special Govt. Pleader

:J U D G M E N T

In 1980(1)LLJ 137 (GUJARAT STEEL TUBES LTD. v. GUJARAT STEEL TUBES MAZDOOR SABHA), Justice Krishna Iyer had prefaced his judgment with the following observation : -
" Every litigation has a moral and, these appeals have many, the foremost being that the economics of law is the essence of labour jurisprudence."

While expressing what he in his own inimitable way described as Olive Branch approach, it was observed :-

" . . . The golden rule for the judicial resolution of an
industrial dispute is first to persuade fighting parties, by judicious
suggestions, into the peace-making zone, disentangle the differences, narrow
the mistrust gap and convert them, through consensual steps, into negotiated
justice. Law is not the last word in justice, especially social justice.
Moreover, in our hierarchical court system, the little man, lives in the short
run but most litigation lives in the long run. So it is that negotiation
first and adjudication next, is a welcome formula for the Bench and the Bar,
management and union. . ."

2. In the present case, in the course of hearing of the case,
I had called upon both the counsels to follow the Olive Branch approach.
Learned counsels for both the parties in their own way have made submissions
and suggestions which I have considered at length and in depth. Even though

the parties have not been able to converge on any acceptable formula, I am
inclined to dispose of the matter in a pragmatic manner with a view to bring
about a decent burial to the knotty problem raised in this case.

3. Now to the facts. The petitioner is the management of
Madras Refineries Limited, a company registered under the Companies Act and a
Government of India undertaking. The first respondent was initially appointed
on daily wages basis and subsequently on regular basis as a staff car driver
on 23.8.1976. It seems the first respondent was in the habit of absenting
himself for a long period. A bipartite settlement was arrived at between the
Management and the Union on 29.6.198 8 and the respondent No.1 expressed
regret for his prolonged absence. It is claimed by the Management that on
compassionate and humanitarian ground, the Management condoned the absence of
the respondent No.1 and permitted him to join duty. It is further claimed
that even inspite of such dubious history, the respondent No.1 continued in
the same vein and remained absent for a considerable length of time from July
1988 till the end of March 1989. Subsequently he remained absent again from
25.4.1989 by giving a medical certificate for the period from 25.4.19889 to
7.5.1989, which was not accepted by the Management and the respondent No.1 was
directed to appear before the Manager, Health Services. Inspite of the letter
dated 15.l5.1989, the respondent No.1 did not appear and continue to remain
absent. A departmental proceeding was initiated. Show cause notice dated
26.5.1989 was issued for certain charges relating to violation of various
clauses of the standing order. Ultimately the order of dismissal was passed
on 9 .8.1989. The respondent No.1 raised a dispute only during the month of
December, 1993, that is to say, after a gap of about 4 years and four months.
For some reason or the other, the matter remained pending and ultimately an
order of Reference was made only on 4.9.1996. The award was made on
31.1.2000. The Industrial Tribunal after recounting the cases of either
parties, directed for reinstatement of the petitioner in service without
backwages, but with continuity of service and other attendant benefits.
The reasons given by the Industrial Tribunal can be best summed up in
the language of the Tribunal itself by extracting the relevant paragraphs,
namely paragraphs 9 and 10.
" . . . As far as the domestic enquiry is concerned, the learned

counsel for the petitioner has made an endorsement on 18.11.1999 to the effect that the petitioner is not challenged the enquiry. Therefore, the fairness of the domestic enquiry is not challenged by the petitioner. At this stage, the only request of the petitioner is to get employment under the respondent. The petitioner has pleaded that he is having children and being the only bread winner of the family his non-employment has resulted in great hards hip to the family. It is true that the domestic enquiry has been conducted and the misconduct of absence has been proved. The fairness of the enquiry is not challenged by the petitioner. The petitioner has worked under the respondent from 1972 till 1983 when a major operation was conducted on him. the petitioner's service during the flood period has been admired. According to the petitioner due to complications after the operation, he was not able to attend duty regularl y. According to the petitioner for the period in which he was charge sheeted he was suffering from Jaundice and was undergoing Alopathic and Homeopathic treatment at Madras and Neyveli. Except Ex.W2 Medical Certificate, the petitioner was not able to say the name of the Doctor who treated him nor was he able to produce any document during the domestic enquiry. The petitioner has not committed any misconduct like abusing or assaulting any co-employee or official or misappropriation of the management's funds or causing damage to the property of the management.
According to the petitioner his absence was neither wilful nor wanton but only due to health condition. This tribunal is of the view that another opportunity should be given to the petitioner considering his poverty and family situation. . . ."

The aforesaid award has been challenged in this writ petition by the Management by filing the writ petition on 13.7.2000. An order of interim stay was passed by a learned single Judge of this Court on 18.7 .2000 directing stay of reinstatement subject to compliance with Section 17B of the Industrial

Disputes Act. Subsequently when the matter was listed for considering further the question of stay, on consent of the counsels appearing, the entire writ petition itself was heard and is being disposed of by the present judgment.

4. Learned counsel appearing for the petitioner has submitted with much vehemence and perhaps some justification that the Industrial Tribunal after having come to the conclusion that the domestic enquiry itself was fair and after having affirmed the finding about the delinquencies of the respondent No.1, should not have given a direction for reinstatement merely on the ground that a fresh chance is to be given to the workman. It has been submitted that there is no conclusion by the Tribunal that the punishment was grossly disproportionate to the nature of delinquency or shocking to the judicial conscience warranting interference in the order of dismissal.

5. The only discernable reason regarding direction of reinstatement appears to be the conclusion of the Tribunal that the employee had not committed misconduct like abusing or assaulting any co-employee or officer or misappropriation of funds or causing damages to the properties of the Management. In other words, possibly the Tribunal was of the view that the allegations against the respondent No.1 were not serious. The Tribunal

has recorded the submission of the employee that his absence was neither wilful nor wanton, but only due to health condition. The ultimate conclusion of the Tribunal is " . . . another opportunity should be given to the petitioner considering his poverty and family situation. . . .".

6. If these reasonings are considered, prima facie one would tend to agree with the submissions of the counsel for the petitioner regarding absence of adequate reasons for giving a direction for reinstatement even after having been found that the domestic enquiry was fair and the conclusions had been upheld.

7. In normal course, I would have remanded the matter to the Tribunal for fresh consideration regarding the punishment in the light of the provisions contained in Section 11-A of the Industrial Disputes Act. However, since the order of termination had been passed in the year 1989 and the matter remained pending for a pretty long period, instead of remanding the matter, with the inevitable consequence of prolonging the agony of both the parties in the shape of renewed uncertain litigation, with a view to give a quietus to the matter, I had called upon both the parties to find out an amicable solution. Even though the counsels for both the parties were not able to give any agreed proposal, on the basis of the submissions made by them and keeping in view the peculiar circumstances, narrated hereunder, I propose to dispose of the matter in a manner which would, hopefully bring the litigation to an acceptable end.

8. As already indicated, the order of termination, which has brought in its wake present litigation, was passed on 9.8.1989. The respondent No.1 raised the Industrial Dispute after remaining quiet for a period of about four years. For some reason or other, the matter had remained pending before the Conciliation Officer and the Reference was made on 4.9.1996 and the award was made on 31.1.2000. At the time of granting stay, there was a direction regarding compliance with Section 17-B of the Industrial Disputes Act. In law, the employer is bound to pay the last wages drawn to the employee if the award is challenged by the employer as envisaged under Section 17-B of the Act. Thus, from February, 2000 till September 2002, that is to say, for a period of about 20 months, the employer was obliged to pay last wages drawn.

9. The counsel for the Management has made it clear that in view of the chronic absence of the respondent No.1 in the past, the Management is no longer willing to take back the employee even though there is no serious allegation such as misappropriation or causing damages to the properties of the management. It is a clear case where the management has lost total confidence on the employee. The counsel for the Management has also submitted

that even though a voluntary retirement scheme is available, to gift the respondent employee the benefit of voluntary retirement scheme in its full, would be like rewarding his persistent absence.

10. Learned counsel appearing for the respondent No.1 on the

other hand has submitted that in normal course, the petitioner would be entitled to the benefits like payment of bonus and gratuity, etc., and if the award would be implemented, he would have the benefit of serving for another 8 years.

11. A perusal of the affidavit filed by the first respondent makes it clear that in view of his chronic health, the respondent No.1 would prefer to do some light work. It is also submitted that the respondent No.1 has to maintain his wife and two children.

12. Keeping in view the rival submissions made by both the parties and the facts and circumstances already noticed in preceding paragraphs, I think interest of justice would be served by giving the following directions :-

(1) The respondent No.1 would be paid at the rate of last wages drawn for the period from the date of the award till the end of September, 2002 in accordance with Section 17-B of the Industrial Disputes Act. If any amount is already paid on this score, the same should be adjusted and balance amount should be paid.

(2) It must be deemed that the petitioner is reinstated with effect from the date of the award and on that basis, the petitioner shall be deemed to have been retired on the basis of voluntary retirement scheme. Period of service should be calculated from 23.8.1976 till the date of the award of the Tribunal, but, while calculating the years of service, the period from 9.8.1989 till 4.9.1996, that is to say, the period of 7 years, shall not be counted.

(3) While calculating the amount payable on the basis of voluntary retirement, salary should be calculated at the rounded figure of Rs.13 ,000/-.

(4) If the petitioner is entitled to payment of Provident Fund even when Voluntary Retirement Scheme is applicable, such amount should be paid.

(5) Apart from the above, no other amount would be payable. Out of the amount payable in accordance with the above direction, Rs.4,00,0 00/- shall be kept in fixed deposit in any Nationalised Bank in the name of the respondent No.1 and his wife for a period of five years with permission to withdraw quarterly interest and the balance amount should be disbursed to the respondent No.1 in cash. The aforesaid directions should be given effect to within a period of three months from the date of communication of the order.

13. Subject to the the directions made, the writ petition is disposed of. There will be no order as to costs. Consequently, W.M.P.No.1 7093 of 2000 is closed.

Index : Yes
Internet : Yes

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To

The Presiding Officer,
Industrial Tribunal,
Chennai.

P.K. MISRA, J.

Judgment in W.P.No.11923/00
& WMP.No.17093 of 2000